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The Province of Alberta

IN THE MATTER OF "THE NATURAL GAS UTILITIES ACT"

—and—

IN THE MATTER OF an Enquiry into Scheme to be adopted for Gathering, Processing and Transmission of Natural Gas in Turner Valley

G. M. BLACKSTOCK, Esq., K.C., *Chairman*

Dr. E. H. BOOMER, F.C.I.C., *Commissioner*

Session:

CALGARY, Alberta January 7th, 1946

VOLUME 62

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9.30 A.M. Session,
January 7th, 1946.

THE CHAIRMAN: Mr. Mercer.

R. D. MERCER, Recalled.

MR. FENERTY: Mr. Chaiman, if the Board pleases, I assume that Mr. Mercer is going to take the stand for the purposes of the completion of his cross-examination.

THE CHAIRMAN: That is my understanding.

MR. FENERTY: As far as I am concerned, I have nothing further to cross-examine Mr. Mercer on other than matters arising out of the statements and documents which the Board directed should be produced. You know that we have had some correspondence, Mr. Chambers and I, and I think we are hopeful of being able to get together and having sufficient material that we can go on with the cross-examination that perhaps would be sufficient for our purposes. Now we have had some material, we received it, I think, on Friday or Thursday afternoon. After consultation with Mr. Morrison, who is assisting me from an accounting point of view, it does not seem to me that the material is of any particular use, nor does it seem to me that it corresponds in any way with what was applied for and what was directed to be given. It seems to me this is the proper time to discuss it. You did mention that if we were unable to get together on matters that it could be spoken to. If other counsel have matters to cross-examine him on, that is all right and I can speak to it at any time. That is satisfactory as far as I am concerned. But we have to thresh this point out before I can go on any further. Shall we speak to it now?

THE CHAIRMAN: Yes.

MR. FENERTY: Here is one of the difficulties and the reason perhaps that we are unprepared or I am unprepared today is that in October last I submitted to my friend, Mr. Chambers, what Mr. Steer and myself and those we consulted with thought were the things we should have in order to go into this question of the division of costs of gathering and perhaps of compression on the sales realization method. Unfortunately, we did not learn until the end of last week what documents Royalite thought they should produce in accordance with that direction. I think it was Friday afternoon at three o'clock or Thursday afternoon at three o'clock, I have forgotten which, although we did take the matter up with Mr. Chambers as early as October. That did not give us very much time to work on, a day and a half, and we were unable to do anything with these particular statements. I felt that all that could be done was to raise the question here today. I do not want to take up very much time but I think we should review the situation, because we are all perhaps a little hazy on some of the things that took place due to the lapse of time. At the outset let me say what we are directing our attention to is the material which we anticipate or we think from the evidence already given is in existince, which will assist the Board in determining what the results are of the division of costs of any operation, which might have more than one purpose, which might be properly relative to the dry gas industry as well as perhaps the absorption industry or even the oil industry in determining not only what is the proper basis but the result of that basis. I submit, for instance, if the Board should come to the conclusion that the sales realization or value

basis, as distinguished from the volumetric basis, is the proper one, then that conclusion is more or less an idle one without material to support a finding on that basis. We have had material filed and lengthy evidence submitted not only as to the possibilities of the future but what has happened in the past as to every other theory or contention which the Board might have to pass on. So far as I know, the only contentious question with respect to which there has been no evidence showing the result of that theory is the division of costs on a sales realization basis. I do not propose to argue . . . . .

THE CHAIRMAN: I thought Royalite had abandoned that. I thought Royalite had abandoned the sales realization basis, as a basis upon which . . . .

MR. FENERTY: That who had abandoned it?

THE CHAIRMAN: Royalite or Madison.

MR. FENERTY: I am prepared to submit this. I appreciate that my friend will say they have abandoned it but I am prepared to submit this, that the submission of the Royalite Company was on the sales realization basis. That is being contested very vigourously by the officials of the Madison Company. That is our position today.

MR. CHAMBERS: In order to clear up any misunderstanding Royalite certainly has abandoned it.

THE CHAIRMAN: And substituted the volumetric basis.

MR. CHAMBERS: Yes.

MR. FENERTY: That is fine. Royalite may now say they are abandoning it, but we are not abandoning it. If we are only to go on the submissions of Royalite, there is no reason for us to be here. What I am here for is because

Royalite honestly and sincerely submitted a submission, not for inter-departmental purposes, not for taxation purposes and not for any purpose except as a proper and fair division of the operating costs as between Royalite and Madison, while this Inquiry was under way. I want to briefly refer to that. We have here, I say, a submission from Royalite that that division of the operations of the two companies is a proper basis for determination by this Board. That is the sales realization method is the proper and fairest method. That is not for any other purpose except for the guidance and assistance of this Board. I say that has been the Royalite position. We have here the unique position of officials of the Madison - we appreciate, of course, it is a wholly owned subsidiary and that is the only possible excuse for it - a submission by the officials of Madison combatting the submissions of the Royalite Oil Company. In other words, seeking by every means in their power to establish charges against themselves, as compared with the submission made by the Royalite Company. I want to refer briefly to the submission of the Royalite Company. It is well enough for my friend to say we are abandoning it, and that we cannot go into it.

MR. CHAMBERS: I do not say that you cannot go into it. I am not contending against your right to go into it all you like, but when you say that is the Royalite's position before this Board, I say that is not so.

MR. FENERTY: I say that we are at one with the Royalite and we are contending against Madison. Let us see what the position is.

THE CHAIRMAN: Mr. Fenerty, Mr. Mercer is in some official position with the Royalite Company. He is in charge

of the records and in charge of the books. He has been ordered to produce those books.

MR. FENERTY: Yes.

THE CHAIRMAN: Does the production of those books show any result arrived at on a sales realization basis?

MR. FENERTY: I have a reference to that.

THE CHAIRMAN: If it is not in the books, I am not going to order this witness to prepare a hypothetical statement based upon what might be sales realization value.

MR. FENERTY: My purpose here, at the moment, is to endeavour to review the matter or to make clear what it seems to me we asked for and what it seems to me the Board has ordered, and compare that with what we have got. I think we have got to that stage now.

THE CHAIRMAN: I do not want to interrupt you at all but my order was that Royalite should produce the financial statement you asked for on your original motion, the internal statement of the company and the Company's books. If Mr. Mercer has those books and those statements here, you can cross-examine him on them ad lib. But I want to make it quite clear that I am not going to permit . . . . .

MR. FENERTY: I will try not to be too long. But I think I can show what I have in mind.

THE CHAIRMAN: I want to finish. I am not going to permit these books or these statements to be taken out of the witness' custody in order that they may be examined by Mr. Morrison or anyone else.

MR. FENERTY: All right.

THE CHAIRMAN: You can cross-examine him ad lib.

MR. FENERTY: Of course it may be with my elementary knowledge of accountancy that I will take a month instead of

a day, but that cannot be helped.

THE CHAIRMAN: It cannot, I agree. I make this suggestion that you be given assistance by Mr. Hamilton in obtaining those facts, if you wish, on which you will base your cross-examination, but I am not going to allow another Chartered Accountant to go into the Royalite books.

MR. FENERTY: You will see, at least I hope I will make myself clear in a moment or two, that what we are endeavouring to avoid is a lengthy examination which may turn out to be of no purpose and secondly, from a fishing expedition, that the Board was quite properly zealous to guard against. Before I go on with this reference, I just want to make my position clear and I will support it by references. There are two things that we sought to obtain, that is Mr. Steer and myself. There was first of all the results which perhaps did not require an application to the Board so far as Mr. Mercer is concerned and that was the results of the analysis made by Mr. Hamilton of the 1943 operations of the Royalite Company and an analysis, he says, if he attempted to make it for 1942, might mean months of work. You will remember we had a discussion of trying to get along with 1943 in the hopes that 1942 would not be necessary. That was asked for. During the argument of this portion, so far as Mr. Mercer is concerned, I take the position that with Mr. Mercer I was not concerned . . . I will give you the reference to that - as to the production of those, because if we were entitled to them we assumed we would not go fishing around the Royalite Company's books but Mr. Hamilton would go on the stand and give the results of his analysis. That is one thing that was definitely asked for both by Mr. Steer in the first instance and myself supplementing him, which I perhaps unwarrantedly took it for

granted was going to be a matter for inquiry and we would have an opportunity of finding out what Mr. Hamilton found out. That is one part of it. The other part, which was directed to compelling Mr. Mercer to answer questions, had to do with the various statements prepared, Mr. Kirkpatrick says for one purpose or another - we asked for the production, not a complete rummaging around in the Royalite Company's books but those statements showing certain allocations as between certain departments. I think we can say, at the moment, that we are not particularly concerned about seeing the Royalite's books at all. But we do want the statements that Mr. Kirkpatrick said were in existence, showing the breakdowns. What we have got is what my friend tells me is a synopsis of some totals of something which, at the moment, does not mean very much to us. May I refer to what we asked for and what I think the Board granted us. I might be wrong. First of all, the basis of that is quite avowedly seeking to establish these things. One is that sales realization method is a proper and fair method and the only proper and fair method of allocating the costs, which are common to more than one operation, including the dry gas operation. That is the first thing. The second thing is, in case the Board should adopt that basis, something on which a finding can be made as a result of it. I say we have got evidence of what the result is of every other kind of thing that happens and in this case it is idle to have a finding as to the basis and then have no evidence on which the Board can proceed to fix a figure. We want two things. One is something which we hope will establish to the Board that that is the proper method and secondly, the result if that method is adopted.

May I refer briefly here to Volume 4, at page 208. We find Mr. Latham on the stand led by Mr. Chambers, - I mean his evidence was led by Mr. Chambers, I did not mean he was asking leading questions. This is Exhibit 15.

"This is a memorandum setting forth the proposed basis for dividing costs of operating the No. 1 and the No. 3 Compressor Plants and the Gas Gathering Lines between Madison Natural Gas Company Limited and Royalite Oil Company Limited."

Then he proceeds to refer to it.

"It is also suggested that" - this is as between the the Madison and the Royalite, and this is not anything inter-departmental -

"It is also suggested that the total costs as estimated from the above mentioned factors be apportioned in ratio to the respective revenues from gas sales and natural gasoline sales."

Then:

"As to the proposal that the costs be divided in proportion to resepctive revenues, this method is one of the generally accepted methods of allocation, and apparently there is no method more equitable."

I accept my friend's statement that they have abandoned that proposition. I just do not know when they abandoned it but they have abandoned that method. As far as we are concerned, we have not abandoned our contention that that is the proper method. We have the submission made by the Royalite Company that it was the proper method and no doubt that was made because of the fact that they had prepared statements and

analyses and found out what the results of that method were. I say the Royalite Company has come here with a submission and I do not care whether they have abandoned it now or not, but they came here with that submission and we are told by Mr. Kirkpatrick they have statements which give the results of those submissions. We applied for them. Now whether or not Royalite is abandoning that contention has nothing to do with our contention.

THE CHAIRMAN: And I have ordered that they be produced.

MR. FENERTY: Now I want to show what we have got and what was ordered to be produced. The statements that Mr. Kirkpatrick said he had, and I am now referring to those statements only because if we are correct in our contention of the 1943 analysis, we do not need the books or anything else, we will just ask Mr. Hamilton questions. He has made the analysis and we want the results. Now this is as to the statements only and here is what we are asking for, in Volume 34 at page 2674.

"MR. FENERTY: If the examination of the records of 1943 make it necessary, but I do not want to put you to the trouble of that, if it is not necessary for you, because I also want the Royalite statement showing results of the Royalite Company and departments of the Royalite Company as integrated departments of the Company for those years."

(Go to page 4899)

Now, as I say, so far as that analysis is concerned that might be properly covered by the analysis which Mr. Ham ilton made for 1943, and perhaps we should not go further.

"In addition'

and this is the part I want:

"In addition we are asking for the production of documents referred to by Mr. Kirkpatrick in his examination before this Board. I have before me Volume 28, and at page 2179 of Mr. Kirkpatrick's examination by myself, there appears a reference, commencing at the bottom of page 2178:

'MR. FENERTY: If you will just glance through the remarks of the Chairman, the questions by the Chairman at the bottom of page 1900 and come over to 1901; it refers to statements prepared in connection with the various branches of the Royalite Company's operations and you are asked at the top of page 1901:

Q But that is the purpose of preparing statements as far as can be done scientifically with relation to each Department.

A That is correct.

Q So that the manager will know what is going on?

A Exactly.

Now I want you to note that question. "As far as can be done scientifically" for each Department and you say "That is correct", and then going on:

Q And such statements were prepared in respect to the Company's various operations?

A They were prepared with respect to the total operations and broken down for various purposes.'"

And then skipping down a little:

"Q My point is that there are statements showing the results of the operations of each of the various divisions of Royalite?

A That is correct.

Q And how often were these statements prepared?

A One annually, to my knowledge."

And then it goes on to where it shows the result of the breakdown, of 60% of the costs of gathering gas, 60% to the dry gas operations and 40% to the other operations.

And then there is a statement, I understood Mr. Mercer to say these statements were under his control.

Now just another brief reference, where Mr. Kirkpatrick first gave that evidence, it was elaborated on a little bit in Volume 24 at page 1896, at the bottom of the page:

"Q But from your knowledge of the books of the Company were there any statements prepared at any time which did show the operating results of the natural gas division?

A There were statements prepared at times which showed the operating results of the natural gas division in its residue gas operating aspect.

Q Yes, and so those show what Mr. Hill terms "successful operation"?

A I would assume them to be successful for the years for which I have reference."

And then:

"Q And in these statements was there any division of operating costs or were they founded on any division of operating costs?

"A Operating costs in what respect, sir?

Q Handling the gathering lines for instance?

A Oh yes, certainly.

Q And do you remember how they were divided?

A I certainly do. They were divided on a basis of gross realization from the two plants which were affected by them."

Now those are the kind of statements we want.

THE CHAIRMAN: And I ordered them to be produced.

MR. FENERTY: And what I submit to the Court is, here is what we have got and these statements have not been produced and I am unable to get what I want from them.

THE CHAIRMAN: I do not know that I am interested in what you got, Mr. Fenerty.

MR. FENERTY: Beg pardon?

THE CHAIRMAN: I say I do not think I am interested in what you got.

MR. FENERTY: Unless they are not what you ordered should be produced.

THE CHAIRMAN: That is exactly it.

MR. FENERTY: And I take it my friend will agree with me that I have not got what was ordered.

MR. CHAMBERS: No, I will not agree with that.

MR. FENERTY: Then here is what I have got.

THE CHAIRMAN: He was ordered to produce books. He was ordered to produce financial statements. Now these financial statements, I presume will show the total operating results of the Company and they will show certain costs which must be common to all those operations.

MR. FENERTY: Yes.

THE CHAIRMAN: He was then asked to produce internal statements from which the factual evidence and relative evidence could be secured. Now if he has not produced those I am going to ask him to produce them.

MR. FENERTY: I will content myself at the moment, and Mr. Chambers can reply, I will content myself by submitting that those two pages do not constitute the documents which were referred to in the motion or in the order.

THE CHAIRMAN: Well I want to be just quite clear there, that in saying that I did not propose that Mr. Morrison or any other chartered accountant, should look at those books, and in saying that I cast no reflection whatever on Mr. Morrison. I hope you understand that.

MR. FENERTY: That is a compliment to him.

Now I am really trying to shorten this because I am not interested in a fishing expedition. I am interested in one thing only, trying to establish if it is to the advantage of my clients that certain methods of allocation of costs be used and the results of those. That is the sole thing I have to do with those, and these analyses made by Mr. Hamilton in 1943, of 1943, insofar as they relate to the allocation of those costs in those operations, are going to be of great assistance to everybody, and the statements that Mr. Kirkpatrick refers to, if they exist, are certainly going to establish the fairness, or otherwise, of the system and the results of the applications of that system to the situation as it exists.

MR. CHAMBERS: I would like to make my position clear. While I disagreed with the granting of the Order, the Order having been made, instructions were given to my clients and this is the position they have taken, that we should

produce all the information as to the division of costs as between the parties, except the one statement which you referred to which I think for special reasons does not come within the terms of the Order, - but I think where my friend's misunderstanding of the situation has occurred, is that he is reading into the Order or assuming from the answers of Mr. Kirkpatrick previously given, that there were far more statements than actually existed. Now my instructions were, - and Mr. Mercer is here to be cross-examined on it, or any other witness, any other employee of the Royalite Company, - that this Company did not keep its accounts by separate departments. On certain occasions, and for special purposes, mainly income taxes and the fixing of a standard profit, there were certain allocations made for the purpose of arriving at an allowance to be deducted for depletion and depreciation with respect to the wells. Now those statements obviously contain far more than the allocation of costs. They contain receipts and profits and so on, and my understanding was that all my friend was interested in and all that should be produced, would be the cost element in those statements, and what we have delivered to him - and they were delivered to him on Friday, and I personally am responsible for the delay for reasons over which I had no control, - we have given him what allocations were made in those statements.

Now we have no objections, in fact we invite, under the circumstances, and to avoid any misunderstanding, that Mr. Hamilton go in and check them, check the authenticity of those distributions which we have given, but my instructions are, and I took particular pains to find out what statements there were, and my instructions are there were only those special statements prepared in connection with income tax

matters for the purposes of depletion and depreciation, and they are not broken down as between the gas division and the petroleum division, for instance. It is broken down as between different types of wells. Now it may not suit my learned friend, I am not suggesting that, but I do not think I am concerned with that. I am concerned with producing any statements showing allocation of costs.

Now my instructions are, whether rightly or wrongly, that those are all, those allocations are all that were made.

THE CHAIRMAN: My recollection of Mr. Kirkpatrick's evidence though was that there were other statements used for internal purposes in the Company.

MR. FENERTY: I might be able to shorten it up. Here is the statement made by Mr. Kirkpatrick about the statements showing the handling of the gathering lines.

"Q And do you remember how they were divided?

A I certainly do. They were divided on a basis of gross realization from the two plants which were affected by them."

MR. CHAMBERS: And my instructions are those are what he was referring to. The tax statements prepared for the purposes of the allocation as between the different types of wells.

THE CHAIRMAN: Well, of course, Gentlemen, I do not know what Order I can make other than the one I have made. "Produce the books". "Produce the Statements"., and Mr.Fenerty will have an opportunity to cross-examine on them as best he can, and if he wants to submit them to Mr. Hamilton, he will have that chance also.

MR. STEER: Mr.Chairman, do you think the matter might be expedited if we had access to Mr. Hamilton's report,

on the 1943 operations? If we could see that we would know what we could get.

THE CHAIRMAN: Well I do not want to order it, Mr. Steer, for this reason, that I understood that Mr. Hamilton secured that information more as a background to the work which he had to do for statements to be submitted to the Board, and the information which he then got was given to him, as I understand it, confidentially. Now I do not want to order Mr. Hamilton to produce it. If the Royalite is willing that he do so, then the trouble is at an end.

MR. STEER: What I feel about it is that Counsel should not be asked to take the Royalite books and get from those books the information that he wants. Mr. Hamilton has got the very things that we do want.

MR. BLANCHARD: I am just wondering, sir, whether that was confidential, and I would like to hear Mr. Chambers on that.

MR. CHAMBERS: Well I am not just sure what statements you are referring to. As I understand it Mr. Hamilton, in his Exhibit 124, his report, said that he had gone over the Royalite's books for 1943, and had made certain allocations himself of the Madison operating expenses, and so on, and that they were more or less hidden.

MR. HAMILTON: That is one of the reasons.

MR. CHAMBERS: Yes. Now it is my understanding that Mr. Hamilton himself made certain arbitrary, - and I use that word not in any sinister way, - made certain allocations. Now the point I am making is this, that Royalite did not make those but Mr. Hamilton did. I am quite prepared and will welcome that Mr. Hamilton go into the box and be questioned about his allocations in his statement. Now if Mr. Hamilton got information

as to profits and so on I do submit that those have no bearing, but as to the allocation of costs or any allocations that Royalite has made, certainly.

THE CHAIRMAN: Have you seen Mr. Hamilton's statements?

MR. CHAMBERS: No.

THE CHAIRMAN: You have them with you, Mr. Hamilton? have you?

MR.HAMILTON: I have them downstairs and the Company has them.

MR. CHAMBERS: I made inquiries about that and this is my information, that you had given the working papers and they have those.

MR. HAMILTON: The statements were with the working papers and were handed to the Royalite Company. They used the working papers, I mean the statements with the working papers, and some two weeks ago I imagine it would be, anyway before we adjourned, I gave them the working papers and I believe a draft of the statement was with them at that time. I recall to my mind that they had that statement.

THE CHAIRMAN: One thing is clear, I think,- well perhaps it is not so clear, - subject to what the Appellate Division says with respect to my Order against the Gas Company,- if I made a similar Order here that would be rather futile, because Mr. Hamilton has already got what you want, or at least I think he has.

I am going to adjourn for fifteen minutes and I am going to ask Mr. Chambers and those associated with him to look at Mr. Hamilton's statements and tell us if they are willing that Mr. Hamilton go into the box and produce those, and then if Mr. Fenerty is not satisfied he still can come back to my order of September.

MR. FENERTY: I make one suggestion which perhaps the Board, as well as Counsel, might think of during the adjournment, I do suggest in all seriousness that, - I do not know just how to put it, - that Mr. Hamilton should not have any information in confidence or otherwise, which might in any way affect the opinions he has given here as to the proper method of doing anything, which is not available to everyone who has to argue the same questions.

THE CHAIRMAN: Yes. Well as I understand it, Mr. Fenerty, it was not a case of saying to Mr. Hamilton "We will give you this information , but you must keep it to yourself." It was information that he required as a background to the work which he was about to do.

MR. FENERTY: What I want to suggest is this, if there was any information he required to make his report it must necessarily be available to us because we might draw a different conclusion than he did from that information.

MR.BLANCHARD: I think we can deal better with that if we discussed this matter first. I doubt very much whether any information that was given to Mr. Hamilton was confidential, that is why I raised that point.

THE CHAIRMAN; Will you produce those statements, Mr. Hamilton, and let Counsel see them, and if afterwards by Mr. Hamilton going into the box it will solve the problem, then that will be done.

MR.HAMILTON: When you say "Counsel" you mean Mr. Chambers?

THE CHAIRMAN: All the Counsel. You had better let Mr. Chambers see them first.

MR. HAMILTON: That is the point I wanted to make clear.

MR. CHAMBERS: I have no objection to anybody seeing the cost statements, but I do think that the internal profit statements are of no value to any person at this stage of the proceedings.

Mr. Hamilton, these statements show the profit situation broken down and if that was confidential, that is what the statements will show?

THE CHAIRMAN: Well, all right. Mr. Hamilton, you let Mr. Chambers see them and then we will see about that later.

MR. HARVIE: I think under those circumstances, so far as we are concerned, we would prefer not to have them produced now and for us to see them. Later on if it is decided that we have the right to see them, we can see them then.

THE CHAIRMAN: All right. And by the way I have additional copies of Professor Stewart's submission, if anyone wishes further copies.

MR. CHAMBERS: I would like some.

(A short adjournment was here taken.)

(Go to page 4909).

MR. STEER: Mr. Chairman, I think perhaps Mr. Blanchard might make this statement. He is Counsel for the Commission.

MR. BLANCHARD: Mr. Chairman, after a long conference I think we have all come to the conclusion we had better adjourn until the submissions are made on the absorption plant Chapter and that at that time probably the information as required by Counsel will be furnished. If not, then of course we can ask for further production.

MR. HARVIE: Adjourn it until when - I did not catch that.

MR. BLANCHARD: Until the statements are made on the absorption plant chapter of this hearing.

THE CHAIRMAN: It might be said that you cannot go into the absorption plant feature until a determination has been made as to the cost allocation between the well head and the absorption plant. That is possible is it not ?

MR. BLANCHARD: That view has not been advanced in our conference during the last half hour and I think we are agreed.

MR. HARVIE: The absorption plant was not represented in that conference. I doubt whether they were.

MR. BLANCHARD: We were having enough trouble without calling you. I quite agree perhaps Mr. Harvie does not agree with that idea.

MR. CHAMBERS: During our discussion so far as Royalite is concerned I intimated we would be preparing statements for submission in connection with the absorption plant phase of the Inquiry about the sales realization and I was not undertaking what would be in that statement because I do not know myself yet. It occurred to me probably this statement would deal with and answer some of the problems confronting Mr. Fenerty now and in the long run time might be saved by

adjourning this particular phase to be dealt with at that time.

THE CHAIRMAN: When is that stage going to be reached. As I have intimated before I would like to finish this hearing before the term of my appointment as Chairman expires.

MR. BLANCHARD: That is 1949 sir, is it not ?

THE CHAIRMAN: We started this in 1944.

MR. CHAMBERS: As I understand we have Mr. Zinder and the Gas Company submission on competitive fuels and there is further information I am having now prepared on historical costs and at the same time my idea was that the Royalite Company could now proceed forthwith to get its material ready in connection with the absorption plant phase so as to follow along.

MR. STEER: I wonder, Mr. Chairman, if I might make my position clear. With Mr. Mercer in the box as at present instructed I would like to ask him to let us have the property account of the Royalite Company broken down for 1943 and prior years to what they call the operating department, crude oil and to its natural gas department and its gasoline department.

THE CHAIRMAN: And that would be in reference to the rate base.

MR. STEER: No with reference to this problem I think of allocating costs as between the gasoline and gas ends of this business, and then I would want him to give me the direct operating cost of each one of those three departments which I believe are kept accurately in that way and then to give us the indirect cost which has to be allocated and in addition to that it seems to me we ought to have the sales from each of those departments which would enable us to compute profits

in dollars. Then we would have to struggle with our own ideas as to the allocation of those indirect costs.

Now I put that view forward and the result of it was that I understood my friend Mr. Chambers stated that in preparing the statements with respect to the division of proceeds of the natural gasoline for the absorption plant, some of those statements will be available probably and for that reason it appeared that it might be wise just to let this aspect of the Inquiry remain as it stands and when Mr. Mercer is in the box with respect to the absorption plant end of this business these questions might then be entered into.

MR. HARVIE: Just on that point, Mr. Chairman, while I appreciate it will be necessary for us to supply statements giving information that is at present being discussed, at the time of the absorption plant hearing, I would point out that my interpretation of the Act is that all this Board does in that Hearing is to allocate distribution or percentage of income between the producer and the absorption plant and so far as I am concerned I cannot conceive of where the Gas Company, the City or others are interested in that.

THE CHAIRMAN: Excepting that the same questions will arise there as they are arising now.

MR. HARVIE: So far as that is concerned the absorption plant is a customer of the utility the same as any person else and if it is proposed to go into their profits, operating expenses, to see what they can afford to pay for transmission of gas from the well to their plant, then I suggest it is just as reasonable that we should go into every consumer in the City of Calgary and every place else on the line to see what they can afford to pay.

THE CHAIRMAN: No I do not think we can go quite that far but in determining the amount which would be available for the allocation between the absorption plant and the producer it would be necessary to determine whether or not the costs that are being charged are proper and reasonable costs.

MR. HARVIE: I think that is true.

THE CHAIRMAN: And that involves the question -

MR. HARVIE: But this Board will be making a finding as to what the absorption plant will pay.

THE CHAIRMAN: But as I understand it the suggestion is not to confuse the two issues but to get information that will be applicable to the absorption plant and will be equally applicable here and do it all at the one time instead of taking two bites at the cherry.

MR. HARVIE: Well my view is that we are all interested in this phase. The appropriate time to get it is at this Hearing and not at the other because I do not -

THE CHAIRMAN: I do not think they are so easily separated Mr. Harvie.

MR. HARVIE: It is just as easy to deal with it at this Hearing as in the other.

THE CHAIRMAN: We will do this, when we come to the absorption plant Hearing, Counsel who are not interested in that phase of the matter will be restricted to the questions that are now relevant to the Hearing we are now conducting.

MR. BLANCHARD: I am trying to avoid duplication.

MR. HARVIE: There will be no duplication if the information is supplied at this Hearing. Surely we can use that information and the Board will be bound by it because unquestionably the Board in this Hearing will be giving directions as to that part of it.

THE CHAIRMAN: Then as I understand it Mr. Harvie the information which Mr. Fenerty wants can only be elicited by what will be necessarily a painful cross-examination of Mr. Mercer. He has already referred to his limits of accounting experience. That is common to most of us. But as Mr.Chambers says he understands that information now being asked for and which can only be elicited over many hours of cross-oxamination will be presented in the form of statements of one kind or another, He may not give them all they want but they will get the rest when they ask for it. That will be presented in the statement when the absorption plant comes on.

MR. HARVIE: My suggestion is that the same information be applied to this Hearing and not wait until the absorption plant and they can be used for both purposes.

THE CHAIRMAN: I do not want to dodge any responsibility or dodge any difficulty but I have enough of them now and if I can get one of them out of the way by adopting the suggestion made I feel very much disposed to do so.

MR. HARVIE: But are we not then jumping from the frying pan into the fire by delaying something now.

THE CHAIRMAN: Well in that event I am prepared to call out the fire brigade.

MR. HARVIE: After all it is in this Inquiry the information is to be had, not in the other.

MR. CHAMBERS: The thought I had was that assuming we have this information and we intend to start on it right away and make it available for this Hearing, but I do want to make my position clear.

THE CHAIRMAN: I understand your reservations.

MR. CHAMBERS: I am not expressly or impliedly undertaking to supply all the information my friend Mr. Steer is suggesting.

THE CHAIRMAN: And in the meantime my existing order will still stand Mr. Chambers.

MR. CHAMBERS: Yes.

THE CHAIRMAN: Now is there any business for next week. We have nothing ready until Mr. Zinder comes.

MR. McDONALD: I was going to suggest that Mr. Brownie's submission is ready. I do not know who is putting it in, that is the Gas Company's submission.

MR. STEER: Our submission as I understand it is in answer to your own.

MR. McDONALD: I do not know that it is an answer. It is a submission. I am going to suggest that Mr. Zinder is only going to be here for the week of the 21st, that possibly next week the Gas Company's submission could be introduced.

MR. STEER: Well I am quite serious. Our submission was prepared as an answer to one that was submitted by Mr. Denton and naturally we would want to hear the direct evidence before the answer is put in.

MR. McDONALD: Mr. Zinder's submission will be distributed tomorrow at least.

THE CHAIRMAN: Now how long will it take ?

MR. McDONALD: Oh the submission itself will not take very long. It can be put in under two hours easily.

THE CHAIRMAN: Can we finish Mr. Zinder in the three days that are available ?

MR. McDONALD: Well I was going to suggest that we sit in the morning and afternoon at least to see how it goes so if there are some other phases, some questions raised by Mr. Blanchard, Mr. Zinder will be dealing with that in the allocation of costs and there will be, I intend to question him in regard to the matter of repressuring costs on which he was

cross-examined by Mr. Fenerty at some considerable length and I have asked him to make a definite submission in regard to that which he will be bringing with him.

THE CHAIRMAN: Well we could sit from 10 to 12.30 and from 2 to half past 4.

MR. McDONALD: Yes I am going to suggest five hour hearings but in regard to this other point -

THE CHAIRMAN: I am agreeable to that.

MR. McDONALD: That Mr. Steer raises in regard to the Gas Company's submission, I always felt and I think the Board has also felt that the question of the sale of gas in Calgary is a submission which the Gas Company should make, as their part of the contribution to the material before the Board and the difficulty is that there is only one source of information and whether prepared as an answer to Mr. Denton or not it is not rebuttal. It is a direct submission of what their considered opinion is and I think in the main it will save a day's time in regard to Mr. Zinder who will make available the subsequent two days for Mr. Steer to go east as referred to in his correspondence.

THE CHAIRMAN: The only thing I won't do is to tell Counsel how they are going to run their own case. That is their privilege.

MR. McDONALD: Well...

THE CHAIRMAN: When can we have that Mr. Steer, that submission of yours ?

MR. STEER: It is already filed.

THE CHAIRMAN: But when can we have it ?

MR. STEER: At any time.

THE CHAIRMAN: After Mr. Zinder ?

MR. STEER: After Mr. Zinder is in the box.

THE CHAIRMAN: Well we cannot sit the week of the 28th. Mr. Fenerty has a trial that week. When can the absorption plant be ready to go on ?

MR. CHAMBERS: February 4th we would have the material ready.

THE CHAIRMAN: February 4th.

MR. McDONALD: May I just deal with this matter again. I am very anxious to have Mr. Zinder here in regard to this cross-examination of Mr. Brownie or whoever puts in the Gas Company's submission. I am faced with the request that Mr. Steer will not be available on the last two days of the week of the 21st.

THE CHAIRMAN: Well I have already asked Mr. Steer if he could change his appointment and he has tried to and cannot. I had that in mind too perhaps the other appointment could be re-arranged but that appears to be impossible.

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MR. STEER: I made arrangements in good faith relying on the three-day sittings.

THE CHAIRMAN: Quite right. We will do this if you wish, Mr. McDonald. We can postpone Mr. Steer's submission until such time as Mr. Zinder can come back.

MR. McDONALD: Mr. Zinder will not be available for this Hearing during the balance of 1946. I have spent many thousands of dollars in the preparation of this case and I do not want to spend another two thousand dollars to bring him here on another occasion to accommodate counsel who could very well make available someone to take his place or otherwise deal with the matter. It costs approximately two thousand dollars to bring Mr. Zinder here.

MR. STEER: I do not understand that suggestion about the accommodation of counsel.

MR. McDONALD: I suggest I want to finish Mr. Zinder on the first three days.

MR. STEER: I will finish with Mr. Zinder just as rapidly as I can finish with him. I do not understand that I am getting any particular accommodation when I rely on the rules of the game.

MR. McDONALD: But you might help us by putting in your own submission next week.

MR. STEER: I have advised my client, Mr. Chairman, that the submission that they put in is to be put in in answer to the submission that is being made by the Producers' Committee. That is the position I still take.

THE CHAIRMAN: And that might even mean it would not be put in.

MR. STEER: It might not be put in and it might be

altered.

MR. CHAMBERS: If we sit the first three days, probably the afternoon of one or two days.

THE CHAIRMAN: We are going to sit mornings and afternoons on Tuesday and Wednesday if need be.

MR. CHAMBERS: Do you not think there is a possibility of being able to complete both of these witnesses?

THE CHAIRMAN: Quite so. Well that is how it shall be and then on the 4th of February, we shall start with the Absorption Plant.

MR. HARVIE: In that connection I do not know, I have not received instructions and I have not been able to ask for them in connection with whether our case can be prepared at that time. It just occurred to me that if the Royalite have their information available, that is requested by Mr. Steer and Mr. Fenerty, that that part of it might be filed and finished with this phase rather than getting the two inquiries mixed up.

THE CHAIRMAN: I do not think they will be mixed up. I think they will easily be kept separate, Mr. Harvie.

MR. HARVIE: I think possibly different counsel will be present on that specific phase of it, that is if this Board deals with the question as between the Producer and the Absorption Plant on a change of contract, it cannot be of any particular interest to a lot of counsel represented here.

THE CHAIRMAN: As I have said, counsel who are not immediately interested in the Absorption Plant will be restricted to these matters which are relevant to this particular enquiry we have now. We will have Mr. Zinder on the 21st and we will not sit the week of the 28th, but we

will start with the Royalite Absorption Plant on the 4th of February. From then on, we will take over. Perhaps I should speak to you, Mr. Hamilton.

MR. HAMILTON: I was wondering if we could have some indication of when Royalite and the British American information will be available on the Absorption Plants and we will have a chance to review it and save time, both of the Board and Counsel.

MR. CHAMBERS: I obviously cannot give any definite information with respect to that. We are going at it right away and as soon as it is available we will advise Mr. Hamilton and other counsel. I am anxious as anybody to get these things prepared quickly.

MR. HAMILTON: I was thinking of the rules laid down in the first instance. If it is necessary for us to present a submission in part with respect to the Absorption Plant, we will require more than a day's notice. If we do not get the information until a day or two before the 4th, it will be a waste of time and the same applies to the British American. I think it is important, too, that we should have an opportunity of relating the activities of these two companies, one with another, rather than deal first with the Royalite and then later with the British American ab initio.

THE CHAIRMAN: The 4th of February will have to be a tentative date.

MR. STEER: Might I ask, Mr. Chairman, that my friend, Mr. Chambers, keep in mind those matters I mentioned, which, from the point of view of my present instructions, I am going to be interested in getting an answer to all those questions.

THE CHAIRMAN: I notice Mr. Chambers reads his transcript very carefully and I think he will notice what you say. Then, Gentlemen, I hope we can go right through to the finish without further adjournment. Mr. McDonald made an application the other day which I think was a very proper application. I did not see fit to grant it. I think the position is that everyone interested in this Inquiry should know, before very long, what their position is going to be and that the mass of accounting that is going to be needed as a result of the operations from 1944 down to date is very important. So I hope we can go right through and I am willing to sit longer hours, if the Court Reporters are and if you gentlemen are, from now on. Two and a half hours in the morning and two and a half hours in the afternoon, subject to the convenience of counsel of course. There is nothing to keep us going now, so we will adjourn for the day and for the week.

MR. BLANCHARD: Depending on when the Court of Appeal gives a judgment, I suppose.

MR. STEER: Mr. Fenerty, you could not arrange that trial of yours for the week of the 14th.

THE CHAIRMAN: He tried that, I believe.

MR. STEER: Mr. Fenerty, you cannot arrange your trial for the week of the 14th?

MR. FENERTY: The trouble is that one of those trials that is giving us so much difficulty is set down for 2 o'clock on Wednesday of that week and the other case is going to take more than those two days. So it will take a week.

THE CHAIRMAN: Have you a case for the week of the 14th, Mr. Blanchard?

MR. BLANCHARD: Wednesday, the 16th, at 2 o'clock, a

special date fixed.

(At this stage the Hearing was adjourned until 9.30 A.M. 21st January, 1946.)

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